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10 Inc. and Yandex LLC

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION  
14

15 PERFECT 10, INC.,

16 Plaintiff,

17 vs.

18 YANDEX N.V., a Netherlands  
19 limited liability company;  
20 YANDEX Inc., a Delaware  
21 Corporation; YANDEX LLC, a  
22 Russian Limited Liability  
23 Corporation; and DOES 1 through  
100, inclusive,

Defendants.

CASE NO. CV-12-1521-WHA

**YANDEX LLC'S ANSWER TO FIRST  
AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

24  
25 Defendant Yandex LLC hereby answers the First Amended Complaint of Perfect 10, Inc.  
26 ("Perfect 10"), as follows:  
27  
28

**JURISDICTION AND VENUE**

1  
2 1. Yandex LLC admits that Perfect 10 has brought claims under the Copyright Act, 16  
3 U.S.C. § 101, *et seq.*, and that this Court has jurisdiction over the territorial subject matter of  
4 Perfect 10's complaint pursuant to 28 U.S.C. § 1331.

5 2. Yandex LLC denies that venue is proper in this judicial district with respect to  
6 Perfect 10's lawsuit against it.

7 3. Yandex LLC denies that this Court has personal jurisdiction over it. Yandex LLC  
8 denies the remainder of the allegations in paragraph 3 that pertain to it, and further denies that it  
9 has engaged in any conduct that has caused or contributed to the infringement of any of Perfect  
10 10's alleged rights.

**THE PARTIES**

11  
12 4. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
13 in paragraph 4, and on that basis it denies the same.

14 5. Yandex LLC admits that it is a subsidiary of Yandex N.V., a Netherlands company.  
15 Yandex LLC admits that it operates the internet website located at yandex.ru and provides search  
16 results required for the operation of yandex.com, and that it owns the domain registrations for  
17 yandex.st and yandex.net. Yandex LLC denies the remainder of the allegations in paragraph 5 that  
18 pertain to it, and further denies that it has engaged in any conduct that has caused or contributed to  
19 the infringement of any of Perfect 10's alleged rights.

20 6. Yandex LLC admits Yandex Inc. is a Delaware corporation registered to do  
21 business in California. Yandex LLC admits that Yandex Inc. operates a research facility in Palo  
22 Alto, California, and that Yandex Inc. provides certain data hosting services relating to  
23 yandex.com, as well as software development services to Yandex LLC. Yandex LLC denies the  
24 remainder of the allegations in paragraph 6 that pertain to it, and further denies that it has engaged  
25 in any conduct that has caused or contributed to the infringement of any of Perfect 10's alleged  
26 rights.

27 7. Yandex LLC admits that it is a Russian company that owns the domain name  
28 registration for and operates the yandex.ru website. Yandex LLC admits that it previously held a

1 registration to do business in California. Yandex LLC admits that it holds the domain name  
 2 registration for the internet website www.tweetedtimes.com and that Yandex Inc. provides hosting  
 3 services for that website, but denies all other allegations relating to that website. Yandex LLC  
 4 admits that it has entered into contracts with certain corporate entities within some of the  
 5 multinational corporate families identified in paragraph 7. Yandex LLC denies the remainder of  
 6 the allegations in paragraph 7 that pertain to it, and further denies that it has engaged in any  
 7 conduct that has caused or contributed to the infringement of any of Perfect 10's alleged rights.

8       8.       Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
 9 in paragraph 8, and on that basis it denies the same.

10       9.       Yandex LLC denies the allegations in paragraph 9.

#### 11                                   **THE BUSINESS OF PERFECT 10**

12       10.       Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
 13 in paragraph 10, and on that basis it denies the same.

14       11.       Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
 15 in paragraph 11, and on that basis it denies the same.

16       12.       Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
 17 in paragraph 12, and on that basis it denies the same.

18       13.       Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
 19 in paragraph 13, and on that basis it denies the same.

20       14.       Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
 21 in paragraph 14, and on that basis it denies the same.

22       15.       Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
 23 in paragraph 15, and on that basis it denies the same.

#### 24                                   **THE BUSINESS OF YANDEX**

25       16.       Yandex LLC admits that it is a subsidiary of Yandex N.V. Yandex LLC admits  
 26 that yandex.com and yandex.ru are websites that may be accessed from various locations, but  
 27 lacks information sufficient to admit or deny whether they may be accessed "throughout the  
 28 world[,]” and on that basis it denies the same. Yandex LLC denies that Yandex N.V. exercises

1 control over Yandex LLC that is beyond the scope of an ordinary parent-subsidary relationship,  
2 and further denies that Yandex N.V. manages its day-to-day activities. Yandex LLC denies the  
3 remainder of the allegations in paragraph 16 that pertain to it, and further denies that it has  
4 engaged in any conduct that has caused or contributed to the infringement of any of Perfect 10's  
5 alleged rights.

6 17. Yandex LLC admits that Yandex Inc. provides certain data hosting services  
7 relating to yandex.com, as well as software development services to Yandex LLC. Yandex LLC  
8 denies that Yandex Inc. is substantially involved in or essential to the operation of yandex.com or  
9 yandex.ru. Yandex LLC denies the remainder of the allegations in paragraph 17 of the complaint,  
10 and denies that it has engaged in any conduct that has caused or contributed to the infringement of  
11 any of Perfect 10's alleged rights.

12 18. Yandex LLC admits that it owns the Internet registration for yandex.ru. Yandex  
13 LLC admits that yandex.com and yandex.ru are websites that may be accessed from various  
14 locations, but lacks information sufficient to admit or deny whether they may be accessed  
15 "throughout the world[,]" and on that basis it denies the same. Yandex LLC admits that, to  
16 different extents, yandex.com and yandex.ru provide certain features and services for their users.  
17 Yandex LLC admits that yandex.com utilizes cookies. Yandex LLC admits that yandex.ru utilizes  
18 cookies. Yandex LLC denies that yandex.com is an English version of yandex.ru. Yandex LLC  
19 denies that yandex.ru and yandex.com "share many of the same resources." Yandex LLC denies  
20 the remainder of the allegations in paragraph 18 that pertain to it, and denies that it has engaged in  
21 any conduct that has caused or contributed to the infringement of any of Perfect 10's alleged  
22 rights.

23 19. Yandex LLC admits that yandex.com and yandex.ru each allow their respective  
24 users to search for images using search terms, but denies Perfect 10's characterization of how  
25 those search features operate. Yandex LLC admits that thumbnails used by yandex.com are stored  
26 on servers owned by Yandex Inc. Yandex LLC lacks information or belief sufficient to admit or  
27 deny the allegations in paragraph 19 that pertain to Exhibit 2, and on that basis it denies the same.  
28 Yandex LLC denies the remainder of the allegations in paragraph 19 that pertain to it, and denies

1 that it has engaged in any conduct that has caused or contributed to the infringement of any of  
2 Perfect 10's alleged rights.

3         20. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
4 in paragraph 20 because no specific Yandex entity or website is identified, nor are any allegations  
5 made specific to Yandex LLC, and on that basis it denies the same. Yandex LLC lacks  
6 information or belief sufficient to admit or deny the allegations in paragraph 20 that pertain to  
7 Exhibits 2 and 3, and on that basis it denies the same. Yandex LLC denies that it has engaged in  
8 any conduct that has caused or contributed to the infringement of any of Perfect 10's alleged  
9 rights.

10         21. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
11 in paragraph 21 because no specific Yandex entity or website is identified, nor are any allegations  
12 made specific to Yandex LLC, and on that basis it denies the same. Yandex LLC lacks  
13 information or belief sufficient to admit or deny the allegations in paragraph 21 that pertain to  
14 Exhibit 3, and on that basis it denies the same. Yandex LLC denies that it has engaged in any  
15 conduct that has caused or contributed to the infringement of any of Perfect 10's alleged rights.

16         22. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
17 in paragraph 22 because no specific Yandex entity or website is identified, nor are any allegations  
18 made specific to Yandex LLC, and on that basis it denies the same. Yandex LLC lacks  
19 information or belief sufficient to admit or deny the allegations in paragraph 22 that pertain to  
20 Exhibits 3 and 4, and on that basis it denies the same. Yandex LLC admits that yandex.ru and  
21 yandex.com offer a "search for all image sizes" feature, but denies Perfect 10's characterization as  
22 to how that feature works. Yandex LLC lacks information or belief sufficient to admit or deny  
23 the allegations in paragraph 22 that pertain to Google. Yandex LLC denies the remainder of the  
24 allegations in paragraph 22, and denies that it has engaged in any conduct that has caused or  
25 contributed to the infringement of any of Perfect 10's alleged rights.

26         23. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
27 in paragraph 23 because no specific Yandex entity or website is identified, nor are any allegations  
28 made specific to Yandex LLC, and on that basis it denies the same. Yandex LLC denies the

1 allegations in paragraph 23 that pertain to the DMCA on the grounds that they state legal  
2 conclusions to which no response is required. Yandex LLC admits that Perfect 10 has declined to  
3 place robot exclusion headers on its own websites such as naturaltens.com and perfect 10.com  
4 (which is standard protocol when a website owner does not wish its content to be included in a  
5 search engine index), thereby consenting to the inclusion of its content in yandex.com's and  
6 yandex.ru's image search indexes. Yandex LLC lacks information or belief sufficient to admit or  
7 deny the allegations in paragraph 23 that pertain to Exhibits 2, 3, and 5, and on that basis it denies  
8 the same. Yandex LLC lacks information or belief sufficient to admit or deny the allegations in  
9 paragraph 23 purporting to describe how "a typical search engine" functions, and on that basis  
10 denies the same. Yandex LLC denies the remainder of the allegations in paragraph 23 that pertain  
11 to it, and further denies that it has engaged in any conduct that has caused or contributed to the  
12 infringement of any of Perfect 10's alleged rights.

13         24. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
14 in paragraph 24 because no specific Yandex entity or website is identified, nor are any allegations  
15 made specific to Yandex LLC, and on that basis it denies the same. Yandex LLC lacks  
16 information or belief sufficient to admit or deny the allegations in paragraph 24 that pertain to  
17 Exhibit 6, and on that basis it denies the same. Yandex LLC denies the remainder of the  
18 allegations in paragraph 24 that pertain to it, and further denies that it has engaged in any conduct  
19 that has caused or contributed to the infringement of any of Perfect 10's alleged rights.

20         25. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
21 in paragraph 25 because no specific Yandex entity or website is identified, nor are any allegations  
22 made specific to Yandex LLC, and on that basis it denies the same. Yandex LLC lacks  
23 information or belief sufficient to admit or deny the allegations in paragraph 25 that pertain to  
24 Exhibits 7 and 8, and on that basis it denies the same. Yandex LLC denies the remainder of the  
25 allegations in paragraph 25 that pertain to it, and further denies that it has engaged in any conduct  
26 that has caused or contributed to the infringement of any of Perfect 10's alleged rights.

27         26. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
28 in paragraph 26 because no specific Yandex entity or website is identified, nor are any allegations

1 made specific to Yandex LLC, and on that basis it denies the same. Yandex LLC denies the  
2 remainder of the allegations in paragraph 26 that pertain to it, and further denies that it has  
3 engaged in any conduct that has caused or contributed to the infringement of any of Perfect 10's  
4 alleged rights.

5         27. Yandex LLC denies the allegations in paragraph 27 that pertain to it, and further  
6 denies the allegations regarding contributing to the infringement of Perfect 10's alleged rights on  
7 the grounds that they state legal conclusions to which no response is required.

8         28. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
9 in paragraph 28 because no specific Yandex entity or website is identified, nor are any allegations  
10 made specific to Yandex LLC, and on that basis it denies the same. Yandex LLC admits that paid  
11 advertising is displayed on various webpages associated with the website yandex.ru, and denies  
12 that paid advertising is displayed on any webpages associated with the website yandex.com.  
13 Yandex LLC denies the remainder of the allegations in paragraph 28 that pertain to it.

14         29. Yandex LLC denies that it has actual knowledge that specific Perfect 10 alleged  
15 copyrighted works are available to users of Yandex-branded websites. Yandex LLC admits that  
16 Perfect 10 has transmitted more than 130 communications to one or more Yandex entities  
17 purporting to be DMCA notices, but denies the sufficiency and accuracy of such notices. Yandex  
18 LLC denies the remainder of the allegations in paragraph 29 that pertain to it, and further denies  
19 that it has engaged in any conduct that has caused or contributed to the infringement of any of  
20 Perfect 10's alleged rights.

21         30. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
22 in paragraph 30 because no specific Yandex entity or website is identified, nor are any allegations  
23 made specific to Yandex LLC, and on that basis it denies the same. Yandex LLC admits that a  
24 letter was sent from the law firm of WilmerHale to Perfect 10 on November 11, 2011, and that  
25 letters were sent by customer support to Perfect 10 on January 18, 2012, January 23, 2012,  
26 February 10, 2012, and February 14, 2012. Yandex LLC admits that Perfect 10's DMCA notices  
27 regarding alleged infringing Perfect 10 images hosted on Yandex-branded websites have been  
28 processed to the extent possible in light of their deficiencies. Yandex LLC denies the remainder

1 of the allegations in paragraph 30 that pertain to it, and further denies that it has engaged in any  
2 conduct that has caused or contributed to the infringement of any of Perfect 10's alleged rights.

3 31. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
4 in paragraph 31 because no specific Yandex entity or website is identified, nor are any allegations  
5 made specific to Yandex LLC, and on that basis it denies the same. Yandex LLC denies the  
6 allegations in paragraph 31 that pertain to it, including on the grounds that they state legal  
7 conclusions to which no response is required.

8 32. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
9 in paragraph 32 because no specific Yandex entity or website is identified, nor are any allegations  
10 made specific to Yandex LLC, and on that basis it denies the same. Yandex LLC denies that it has  
11 "aggressively place[d]" advertisements next to allegedly infringing Perfect 10 images. Yandex  
12 LLC lacks information or belief sufficient to admit or deny the allegations in paragraph 32 that  
13 pertain to Exhibit 9, and on that basis it denies the same. Yandex LLC denies the remainder of the  
14 allegations in paragraph 32 that pertain to it, and further denies that it has engaged in any conduct  
15 that has caused or contributed to the infringement of any of Perfect 10's alleged rights.

16 33. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
17 in paragraph 33 because no specific Yandex entity or website is identified, nor are any allegations  
18 made specific to Yandex LLC, and on that basis it denies the same. Yandex LLC lacks  
19 information or belief sufficient to admit or deny the allegations in paragraph 33 that pertain to  
20 Exhibit 10, and on that basis it denies the same. Yandex LLC denies the remaining allegations in  
21 paragraph 33 that pertain to it, and further denies that it has engaged in any conduct that has  
22 caused or contributed to the infringement of any of Perfect 10's alleged rights.

23 **FIRST CLAIM FOR RELIEF**

24 **(Copyright Infringement)**

25 34. Yandex LLC hereby incorporates and restates its responses to paragraphs 1 through  
26 33 above as though fully set forth herein.

27 35. Yandex LLC lacks information or belief sufficient to admit or deny the allegations  
28 in paragraph 35 of the complaint, and on that basis it denies the same.



1 Perfect 10's first amended complaint fails because Perfect 10 lacks standing to sue Yandex  
2 LLC.

3 **THIRD AFFIRMATIVE DEFENSE**

4 Perfect 10's copyright claims are barred on the grounds that Perfect 10 has not received  
5 registration for the alleged copyrights as required by 17 U.S.C. § 411, or, in the alternative, Perfect  
6 10's claim is barred, in whole or in part, to the extent it seeks to enforce copyright registrations  
7 that contain misstatements or omissions that were material to the registrations and material to the  
8 purpose for which Perfect 10 invokes the registrations in this action.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 Perfect 10's claims are barred by the doctrine of fair use.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 Perfect 10's claims are barred by relevant statutes of limitations.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 Perfect 10's claims are barred by laches.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 Perfect 10's claims are barred by its failure to mitigate damages.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 Plaintiff's claims are barred by the First Amendment to the United States Constitution.

19 **NINTH AFFIRMATIVE DEFENSE**

20 Perfect 10's claims are barred by the Online Copyright Infringement Liability Limitation  
21 Act, 17 U.S.C. § 512.

22 **TENTH AFFIRMATIVE DEFENSE**

23 Perfect 10's claims are barred by estoppel.

24 **ELEVENTH AFFIRMATIVE DEFENSE**

25 Perfect 10's claims are barred by consent, acquiescence, and license.

26 **TWELFTH AFFIRMATIVE DEFENSE**

27 Perfect 10's claims are barred by unclean hands.

28 **THIRTEENTH AFFIRMATIVE DEFENSE**

1 Perfect 10's claims for statutory damages are barred by the United States Constitution.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

3 Perfect 10's claims for damages are limited by the United States Constitution.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 Perfect 10's claims are barred because they concern alleged acts which are extraterritorial  
6 and thus not actionable under the Copyright Act.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Yandex LLC prays for judgment against Perfect 10, as follows:

- 9 1. That judgment be entered in favor of Yandex LLC and against Perfect 10 on  
10 Perfect 10's first amended complaint, and that Perfect 10 take nothing thereon;
- 11 2. That the Court grant Yandex LLC an award for reasonable attorneys' fees, costs  
12 and disbursements incurred in this action pursuant to statute, including but not limited to 17  
13 U.S.C. § 505; and
- 14 3. That the Court grant Yandex LLC such other and further relief as the Court deems  
15 just and proper.

16  
17 DATED: February 19, 2013

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

18  
19  
20 By /s/ Diane M. Doolittle  
21 Diane M. Doolittle  
22 Rachel Herrick Kassabian  
23 Attorneys for Defendant Yandex LLC  
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**DEMAND FOR JURY TRIAL**

Yandex LLC hereby demands a jury trial pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

DATED: February 19, 2013

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/ Diane M. Doolittle

Diane M. Doolittle

Rachel Herrick Kassabian

Attorneys for Defendant Yandex LLC